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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,260	09/17/2003	Patsy Ann Krautkramer	19167	3401

23556 7590 07/20/2006

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EXAMINER	
HAND, MELANIE JO	

ART UNIT	PAPER NUMBER
3761	

DATE MAILED: 07/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/664,260	KRAUTKRAMER ET AL.	
	Examiner	Art Unit	
	Melanie J. Hand	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 May 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-22* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-22* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's arguments filed May 5, 2006 have been fully considered but they are not persuasive. With respect to applicant's arguments regarding the rejection of claims 1-22 under 35 U.S.C. 103, Examiner has not engaged in hindsight, nor has Examiner "use[d] the claimed invention to piece together the teachings of the prior art so that the claimed invention is rendered obvious". Examiner's motivation was stated clearly and the motivation for modifying the prior art article of Burnes is that modifying the dimensions of one of the wide sections to be narrower than the other involves only routine skill in the art, and therefore such a modification is in and of itself obvious as an optimization of the dimensions of the article. Examiner has restated the rejection of claim 1 in this Office action to include further motivation by stating that narrowing the article of Burnes would allow such article to fit in a thong undergarment, such undergarments and absorbent articles designed for use with such articles being well known in the art. It is unclear how Examiner engaged in hindsight as applicant has not provided motivation to modify or optimize applicant's own article and certainly has not stated that the claimed invention is known in the art. Applicant's reference to *Gore and Associates v. Garlock* is not relevant as the rejections under 35 U.S.C. 103 made in the case history involved at least two references, whereas the rejection under 35 U.S.C. 103 of the claims of the instant application were only rejected under the prior art of Burnes alone.

With respect to applicant's arguments regarding a terminal end edge, Examiner agrees that Burns does not explicitly teach this and has restated the rejection to clarify that although Burnes does not teach this limitation, since it has been stated that it would be obvious to modify the dimensions of one of the wide sections of the hourglass of the shaping layer, such a

modification yields a narrow section having a terminal edge in the second longitudinal half length of the article of Burnes, and thus renders the independent claim 1 unpatentable. Further, it is unclear how applicant can assert that th Burnes does not teach a terminal edge. Brunes does not teach a narrow section but does clearly teach that each wide section of hourglass shaped shaping layer 9 has a terminal edge.

With respect to applicant's argument regarding a narrow section that substantially avoids extending into a first longitudinal half length of the claimed article, Examiner believes applicant is referring to claim 3, and has restated the rejection of claim 3 set forth in the previous Office action to clarify Examiner's position and address this limitation fully.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burnes et al (U.S. Patent No. 6,608,236).

With respect to **Claim 1:** Burnes teaches an absorbent article having a longitudinal direction, a lateral direction, first and second longitudinally opposed end portions, and an intermediate portion located between said end portions. The article is comprised of a liquid-permeable cover, a liquid-impermeable baffle, and an absorbent body sandwiched between the cover and the baffle. The absorbent body includes an intake layer 6 and a pad-shaping secondary absorbent layer 9. Shaping layer 9 has a longitudinal shaping layer length and a lateral shaping layer width and is positioned between the cover and the baffle. (Col. 13, lines 41, 65-67, Col. 23, lines 15-

18, 22-25, Col. 24, lines 1-5, 23-26). Intake layer 6 is positioned between the cover and the shaping layer and has a longitudinal intake layer length and a lateral intake layer width. Intake layer 6 is rectangular and has an area extent that is less than that of hourglass-shaped shaping layer 9. (Fig. 8) (Col. 14, lines 41-65) Shaping layer 9 being shaped as such thus has two wider sections at the ends and a narrower section connecting the two wider sections, with two respective transition sections between the narrow sections and the wider sections, the diameter of the semicircular end sections defining first and second longitudinal half-lengths. The side edges of the transition section of the hourglass interconnect the lateral side edges of the two wide sections. (Fig. 8) The diameter of the semicircular wide sections define the maximum lateral width of the shaping layer. The wide sections have terminal end edges located in each of the first and second longitudinal half-lengths of said shaping layer.

Burnes does not teach that the intake layer is longitudinally offset toward the wider section that is defined by the first longitudinal half-length, i.e. the front of the article, however it would be obvious to one of ordinary skill in the art to shift the intake layer in such a manner so as to align the central region of the intake layer with the flow of menses so that the fluid may be guided properly and effectively, which would require shifting the layer frontward. Burnes also does not teach a longitudinally asymmetric shaping layer, however absorbent articles designed to follow the contour of a thong undergarment are known in the art and have a longitudinally asymmetric shape and consist of at least one absorbent layer (as shaping layer 9 taught by Burnes is an absorbent layer), therefore it would be obvious to one of ordinary skill to modify the shape of shaping layer 9 so as to be longitudinally asymmetric, having one narrow end section and one wide end section by decreasing the diameter of one of the wide end sections so as to fit in a thong undergarment as well as traditionally shaped undergarments.

With respect to **Claims 2,15:** Burnes teaches an intake layer length ("top layer" as referred to by Burnes) of 152 mm and a shaping layer length ("bottom layer" as referred to by Burnes) of 218 mm (Col. 14, lines 24-27, 45-65), therefore the intake layer length is smaller than the shaping layer length. As can be seen in Figs. 13, and 14, the intake layer width is smaller than the shaping layer width. Therefore the intake-layer area is less than the shaping-layer area (claim 15).

With respect to **Claim 3:** Burnes does not teach a narrow section of shaping layer 9, however as stated previously, absorbent articles designed to follow the contour of a thong undergarment are known in the art and have a longitudinally asymmetric shape defining a wide section and a narrow section and consist of at least one absorbent layer (as shaping layer 9 taught by Burnes is an absorbent layer), therefore it would be obvious to one of ordinary skill to modify the shape of shaping layer 9 so as to be longitudinally asymmetric, having one narrow end section and one wide end section by decreasing the diameter of one of the wide end sections so as to fit in a thong undergarment as well as traditionally shaped undergarments. Such a narrow section would replace the second wide section of shaping layer 9 and thus would be longitudinally opposed to said remaining wide section and would also therefore substantially avoid extending into the article region delimited by the first longitudinal half length of said shaping layer.

With respect to **Claims 4-6:** Burnes does not teach that the intake layer is longitudinally offset toward the wider section that is defined by the first longitudinal half-length, i.e. the front of the article, however it would be obvious to one of ordinary skill in the art to shift the intake layer in such a manner so as to align the central region of the intake layer with the flow of menses so that the fluid may be guided properly and effectively, which would require shifting the layer

frontward. This would result in at least 55% of the intake layer length (and thus also the intake area as width remains constant) being located frontward of a transverse centerline in the region defined by the first longitudinal half-length, thus avoiding the narrow section (region defined by second longitudinal half length) of the modified longitudinally asymmetric shaping layer (claims 4-6).

With respect to **Claims 7-10:** Burnes teaches that the lateral width of shaping layer 9 at its center is 60 mm. Burnes does not teach that shaping layer 9 is longitudinally asymmetric however it would be obvious to one of ordinary skill in the art to modify said shaping layer so as to be longitudinally asymmetric for reasons stated previously herein. Such a modification would result in shaping layer 9 having one wide section and one narrow section, wherein the narrow section would necessarily have a width that is equal to or less than the width of shaping layer 9 at its center. Thus, the upper limit lateral dimension of such a narrow section would be 60 mm, thus satisfying the limitation of claim 7. With respect to claim 8, Burnes teaches that the diameter of each wide section is 70 mm (maximum lateral width) (Col. 14, lines 45-65), therefore the inboard boundary of a narrow section having an upper limit lateral dimension of 60 mm is delimited by an upper limit lateral dimension that is 86% of the maximum width of the shaping layer, i.e. not more than 98% thus satisfying the limitation of claim 8. With respect to claim 9, since Burnes teaches a wide section lateral width of 70 mm, the inboard boundary of said wide section is delimited by a lower-limit lateral dimension of not less than about 40 mm, thus satisfying the limitation of claim 9. With respect to claim 10, since the lateral width of the wide section defines the maximum lateral width of shaping layer 9, the lower-limit lateral dimension of said wide section is equal to the maximum lateral width of shaping layer 9 (i.e. is 100% of said maximum lateral width), therefore satisfying the limitation of claim 10.

With respect to **Claims 11,16:** Since Burnes does not teach a longitudinally asymmetric shaping layer, Burnes does not teach a narrow section. Absorbent articles designed to follow the contour of a thong undergarment are known in the art and have a longitudinally asymmetric shape defining a wide section and a narrow section and consist of at least one absorbent layer (as shaping layer 9 taught by Burnes is an absorbent layer), therefore it would be obvious to one of ordinary skill to modify the shape of shaping layer 9 so as to be longitudinally asymmetric, having one narrow end section and one wide end section by decreasing the diameter of one of the wide end sections so as to fit in a thong undergarment as well as traditionally shaped undergarments. Such a modification would thus result in shaping layer 9 having a wide section, a narrow section and a transition section between said wide and narrow sections wherein said transition section extends between a minimum lateral dimension of said wide section and a maximum lateral dimension of said narrow section. As stated with respect to claims 7-10, Burnes teaches a width for the center of layer 9 that is its lower limit lateral dimension, which is located in the second longitudinal half length of the article.

With respect to claim 16, Burnes does not explicitly teach that a terminal end edge of the intake layer is inwardly spaced from a terminal end edge of a wide section by a distance of 30 mm, however applicant has not established sufficient criticality for such a distance, and thus such a limitation is considered to be an optimization of the positioning of the intake layer taught by Burnes. It would be obvious to optimize this distance between terminal edges to be at least a minimum of about 30 mm, as in the intake layer's primary function is to absorb insult from the wearer, and thus positioning the intake layer frontward of the center of shaping layer 9 would be an obvious modification to one of ordinary skill in the art.

With respect to **Claim 12:** Burnes does not teach substantially linear tapering side edges, however it would be obvious to modify the side edges to taper linearly with a reasonable expectation of success as absorbent articles designed to follow the contour of a thong undergarment are known in the art and have a longitudinally asymmetric shape having substantially linear tapering side edges.

With respect to **Claims 13,14:** As can best be seen in Fig. 8, the transition section of the hourglass of shaping layer 9 has substantially parallel tapering curvilinear side edges that are substantially outwardly concave (claims 13,14).

With respect to **Claim 17:** Burnes teaches that the side edges of each wide section are substantially parallel to each other, but does not teach a narrow section having such substantially parallel edges. However it would be obvious to one of ordinary skill in the art to modify said shaping layer so as to be longitudinally asymmetric for reasons stated previously herein, and since the modification would entail only modifying the width of one of the wide sections of the shaping layer taught by Burnes, the modification would yield side edges of a narrow end section that are substantially parallel to each other.

With respect to **Claims 18,20,21:** Burnes teaches that the pad shaping layer 9 is an airlaid web comprising 80-90 wt% coform material and 10-20 wt% binder fibers, wherein coform material is defined by Burnes as capable of containing superabsorbent material. (Col. 12, lines 14-17) Burnes also teaches that the intake layer is an airlaid web comprised of 80-95 wt% cellulosic pulp fibers and 5-20 wt% binder fibers. (Col. 12, lines 1-4)

With respect to **Claim 19:** Burnes teaches that the shaping layer has a basis weight of 175 gsm, a density of around 0.08 g/cc, an absorbent capacity between about 2.3-3.8 g/cc, wherein the menses stimulant for the tests of absorbent capacity is comprised of defibrinated swine blood, and an area of about 127 cm^2. (Col. 12, lines 14-17, Col. 14, lines 45-60, Col. 15, lines 10-19, Col. 24, lines 1-5) Burnes teaches that the intake layer has a density, absorbent capacity and area that are less than that of the shaping layer. (Col. 11, lines 48-50, Col. 14, lines 45-60, Col. 15, lines 10-19) Burnes does not teach an absorbent capacity of at least about 5 grams, however since applicant stated merely that the capacity of the shaping layer "can be at least 5 grams" (emphasis added) and Burnes teaches a capacity of 2.3-3.8 g/cc, Examiner asserts that modifying the absorbent capacity would involve modifying the weight percentage or distribution of absorbent material in the shaping layer, which would involve only routine skill in the art and thus claim 19 is not patentable over the prior art of Burnes.

With respect to **Claim 22:** Burnes does not teach that the article contains wings, but does teach that they are a known improvement in the art for enhanced leakage protection, (Col. 1, lines 28-31) therefore it would be obvious to one of ordinary skill in the art to modify the article so as to contain asymmetric wings in the narrow section.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie J Hand
Examiner
Art Unit 3761

MJH

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER